

EXHIBIT 3

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY
VIDEOTAPED DEPOSITION OF BARBARA WAGNER on 08/30/2016

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MASSACHUSETTS

3 -----X
4 :
5 IN RE: NEW ENGLAND :
6 COMPOUNDING PHARMACY, INC. :
7 PRODUCTS LIABILITY LITIGATION: MDL NO. 2419
8 :
9 This Documents Relates to: : Master Docket
10 : 1:13-md-02419-RWZ
11 All Cases against the Box :
12 Hill Defendants :
13 :
14 -----X

15 VIDEOTAPED DEPOSITION OF
16 BARBARA WAGNER

17 AUGUST 30, 2016
18 10:32 a.m.

19
20 Peter G. Angelos, P.C.
21 One Charles Center
22 100 N. Charles Street
23 20th Floor
24 Baltimore, MD 21201

25 Before: Linda Bahur, RPR



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1	A P P E A R A N C E S	1	I N D E X
2		2	
3	ON BEHALF OF THE PLAINTIFFS:	3	Videotaped Deposition of:
4	LAW OFFICES OF PETER G. ANGELOS, P.C.	4	BARBARA WAGNER
5	Patricia J. Kasputys, Esquire	5	Examination by Ms. Kasputys
6	Sharon L. Houston, Esquire	6	Examination by Mr. Coren
7	100 N. Charles Street	7	
8	20th Floor	8	
9	Baltimore, MD 21201	9	E X H I B I T S
10	(410) 649-2000	10	(Attached to the transcript)
11	pkasputys@lawpga.com	11	NO.
12	shouston@lawpga.com	12	Exhibit 1602 Notice of Filing Subpoena and
13		13	Amended Notice of Deposition to
14	COHEN PLACITELLA & ROTH, P.C.	14	Barbara Wagner
15	Michael Coren, Esquire	15	Exhibit 1603 E-mail chain between Andrew Howden
16	2001 Market Street	16	and Barbara Wagner, dated 12/16/11
17	Suite 2900	17	Exhibit 1604 Letter dated 9/26/12 re Voluntary
18	Philadelphia, PA 19103	18	Product Recall
19	(215) 567-3500	19	Exhibit 1605 Fax cover sheet, 10/3/12
20	mcoren@cprlaw.com	20	Exhibit 1606 Letter dated 10/3/12 re Voluntary
21		21	Product Recall
22	ON BEHALF OF THE WITNESS KIM BROCKMEYER, R.N.,	22	Exhibit 1607 Fax sheet from Kim Merrill re
23	ECCLESTON AND WOLF	23	Voluntary Product Recall Response
24	R. Scott Krause, Esquire	24	Form, dated 10/1/12
25	Ashley L. Marucci, Esquire	25	Exhibit 1608 qFax sheet from Barbara Wagner re
	7240 Parkway Drive		Voluntary Product Recall Response
	4th Floor		Form, dated 10/4/12
	Hanover, MD 21076		Exhibit 1104 NECC Prescription Order Form
	(410) 752-6464		44
	krause@ewmd.com		
	marucci@ewmd.com		
Page 3		Page 5	
1	ON BEHALF OF BOX HILL SURGERY CENTER, RITU BHAMBHANI,	1	P R O C E E D I N G S
2	M.D., RITU BHAMBHANI, M.D., LLC:	2	THE VIDEOGRAPHER: This is tape number one to
3		3	the videotape deposition of Barbara Wagner, taken in the
4	PESSIN KATZ LAW, P.A.	4	matter of New England Compounding Pharmacy, Inc.,
5	Catherine W. Steiner, Esquire	5	Product Liability Litigation. The deposition is being
6	901 Dulaney Valley Road	6	held at the Law Offices of Peter G. Angelos. This
7	Suite 500	7	deposition is being held on August 30, 2016. My name is
8	Towson, MD 21204	8	Marcus Sobczak and I'm the videographer. The court
9	(410) 769-6143	9	reporter is Linda Bahur.
10	csteiner@pklaw.com	10	Counsel, please introduce yourselves for the
11		11	record and the court reporter will then swear the
12		12	witness in, then we can proceed.
13		13	MS. KASPUTYS: I'm Patricia Kasputys, Law
14		14	Offices of Peter Angelos, and I'm here on behalf of
15		15	seven of the plaintiffs who have claims in this matter
16		16	against Box Hill Surgery Center and Dr. Ritu T.
17		17	Bhambhani. And the clients whom we represent include
18		18	three people who died as a result of receipt of
19		19	contaminated injections of methylprednisolone acetate
20		20	and four people who are living with fungal meningitis.
21		21	MS. HOUSTON: My name is Sharon Houston, Law
22		22	Offices of Peter Angelos, and I represent multiple
23		23	plaintiffs described.
24		24	MR. COREN: Good day. Michael Coren. I
25		25	represent one of the plaintiffs in the Box Hill cases.



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<p>1 I also represent today other plaintiffs in the 2 multi-district litigation.</p> <p>3 MS. STEINER: Catherine Steiner on behalf of 4 Box Hill Surgery Center, Dr. Ritu Bhamhani, and Ritu 5 Bhamhani, M.D., LLC.</p> <p>6 MS. MARUCCI: Ashley Marucci with Eccleston 7 and Wolf on behalf of the deponent, Barbara Wagner.</p> <p>8 MR. KRAUSE: Scott Krause, also on behalf of 9 the witness.</p> <p>10 Whereupon,</p> <p>11 BARRBARA WAGNER</p> <p>12 having been first duly sworn, was examined and testified 13 as follows:</p> <p>14 EXAMINATION BY MS. KASPUTYS:</p> <p>15 Q Good morning again, Ms. Wagner. As I've 16 said, I'm Patricia Kasputys, also known as Patty 17 Kasputys, and I'm here, as you know, to take your 18 deposition today to ask you a series of questions, and I 19 would like to begin with asking you whether you have 20 ever been deposed in the past.</p> <p>21 A No.</p> <p>22 Q So with respect to the general rules of 23 deposition, I'd like to go over -- let me rephrase that.</p> <p>24 I'd like to go over some of the rules for a 25 deposition.</p>	<p>1 of what we will mark as Deposition Exhibit 1602, which 2 is a notice. Actually, it's the Notice of Filing 3 Subpoena and Amended Notice of Deposition to Barbara 4 Wagner, and it's in this litigation document number 3014 5 filed 7/28/16, and I'd like to let you take look at it, 6 please.</p> <p>7 (Exhibit No. 1602 was marked for 8 identification.)</p> <p>9 MS. KASPUTYS: Counsel, do you all need 10 copies of the notice of deposition?</p> <p>11 MS. MARUCCI: Yes.</p> <p>12 MS. KASPUTYS: Catherine?</p> <p>13 MS. STEINER: Sure. We already have a copy.</p> <p>14 MS. KASPUTYS: Sure. Do you want one, Mike?</p> <p>15 MR. COREN: No.</p> <p>16 BY MS. KASPUTYS:</p> <p>17 Q Have you seen this document before, Ms. 18 Wagner?</p> <p>19 A Yes.</p> <p>20 Q And at the end of the document, there is on 21 page, what is listed at the top as page 22 but on the 22 bottom, page 21, there is an endorsement of Third 23 Amended Protective Order of Confidentiality.</p> <p>24 Have you had the opportunity to review this 25 document, these two pages?</p>
Page 7	Page 9
<p>1 Initially, you are giving testimony, I think 2 you understand, that it's under oath, correct?</p> <p>3 A Yes, I understand.</p> <p>4 Q And the court reporter is transcribing what 5 you say and you're here on videotape. Do you understand 6 that?</p> <p>7 A Yes.</p> <p>8 Q When you do give responses, I ask, as you're 9 already doing, for you to give verbal responses and not 10 a shake of the head or other gestures so that it's clear 11 for the record what the responses are. And also I would 12 ask if you do not understand any of my questions, would 13 you please tell me so?</p> <p>14 A I will.</p> <p>15 Q And if you do not tell me you do not 16 understand, then I will assume that you do. Do you 17 understand that?</p> <p>18 A Yes.</p> <p>19 Q And counsel present for the defendants and 20 counsel present for you today may interpose objections 21 from time to time, and regardless of the objections, you 22 are to answer the question unless you are instructed 23 otherwise by counsel. Do you understand that?</p> <p>24 A Yes, I do.</p> <p>25 Q And I'd like to start with showing you a copy</p>	<p>1 A I didn't. No, I did not.</p> <p>2 Q Well, I ask that in light of the fact that 3 you may be shown during this deposition exhibits which 4 have been designated pursuant to the Third Amended 5 Protective Order of Confidentiality in this litigation 6 that you read, and then if you have any questions, you 7 may certainly ask your counsel.</p> <p>8 But I ask you to take a few moments to read 9 this, and then if you agree to its terms, I'd ask you on 10 page 22, listed as page 23 at the top, to sign and date 11 this document.</p> <p>12 A Okay.</p> <p>13 MS. KASPUTYS: And do you have anything you'd 14 like to add?</p> <p>15 MR. KRAUSE: No.</p> <p>16 BY MS. KASPUTYS:</p> <p>17 Q And if you'd keep this document in front of 18 you, I'd like you to turn to -- I'd like you to turn to 19 page 7. It's page 7 at the top and it's not numbered at 20 the bottom. It looks like this. It's labeled 21 Attachment A, Documents Sought.</p> <p>22 A Okay.</p> <p>23 Q Now, have you seen this document or this page 24 before?</p> <p>25 A No, I didn't look through it.</p>

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<p>1 Q Okay. So when the subpoena asked you to 2 bring with you to this deposition documents on 3 Attachment A, which is this page, this is a page that 4 you have not reviewed?</p> <p>5 A I actually -- when I received this, I went 6 through and looked at the discovery. I had already 7 turned in discoveries. And when I went through this, I 8 pulled everything that was related to Box Hill. So I 9 did submit those. My apologies.</p> <p>10 Q When you say you had submitted them, 11 submitted them in response to request for production of 12 documents in this litigation?</p> <p>13 MR. KRAUSE: I'll object to the form of the 14 question. You can answer.</p> <p>15 A I'm not sure. So you're talking about Box 16 Hill, right?</p> <p>17 Q I am.</p> <p>18 A Anything -- the way I read this, I took 19 everything that was related to anything that we had 20 anything to do with Box Hill is what I turned in.</p> <p>21 Q And who did you turn that in to?</p> <p>22 A I thought -- did you not get it? I turned it 23 in to my manager and I thought I made copies.</p> <p>24 MS. KASPUTYS: Do you have any documents that 25 Ms. Wagner has turned in that relate to Box Hill Surgery</p>	<p>1 question.</p> <p>2 A They were in the office. They weren't per se 3 my documents.</p> <p>4 Q And you do have access to those documents, 5 correct?</p> <p>6 A Yes. They're copied.</p> <p>7 MS. KASPUTYS: I would ask that Counsel 8 produce those documents. They're relevant to the 9 subpoena and there was, as you know, filed by you a 10 motion first to quash the deposition of Ms. Wagner and 11 then a motion for protective order filed, and that was 12 ruled on by Judge Boal. And the documents that were 13 narrowed from the original request should have been 14 produced today. And I'm going to ask that this 15 deposition be kept open so that we can continue to 16 pursue the documents that we believe that we're 17 rightfully entitled to pursuant to the subpoena directed 18 to this witness.</p> <p>19 MR. KRAUSE: Counsel, I disagree with your 20 position from a legal perspective. Our motion for a 21 protective order was with respect to the scope of what 22 we believed should be permissible during the course of 23 this deposition.</p> <p>24 MS. KASPUTYS: Go ahead. If you may. Go 25 ahead, Mike.</p>
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<p>1 Center?</p> <p>2 MR. KRAUSE: As we advised you prior to Ms. 3 Brockmeyer's deposition and this deposition, Ms. Wagner 4 is appearing here today pursuant to a subpoena issued to 5 her individually, not in a corporate capacity. Ms. 6 Wagner does not individually possess any documents 7 responsive to the request.</p> <p>8 Certainly if Harford County Surgical Center 9 may possess documents, but it was our position that we 10 were not obligated to produce any records in response to 11 a subpoena issued to Ms. Wagner individually. She is 12 not here as a corporate designee.</p> <p>13 BY MS. KASPUTYS:</p> <p>14 Q Ms. Wagner, were the documents that you put 15 together and gave to your general manager documents that 16 were in your custody and control at Harford County 17 Ambulatory Surgery Center?</p> <p>18 MR. KRAUSE: Object to the form of the 19 question.</p> <p>20 A I'm not sure what you mean.</p> <p>21 Q With respect to the documents that you pulled 22 together that relate to Box Hill Surgery Center, were 23 those documents that in your capacity as an employee of 24 Harford County Surgery Center were in your custody?</p> <p>25 MR. KRAUSE: Object to the form of the</p>	<p>1 MR. COREN: Just so we put a finer point on 2 the pencil, Mr. Krause, are you refusing to turn over 3 the documents which were gathered by Ms. Wagner and 4 tendered to your office?</p> <p>5 MR. KRAUSE: Yes, but for the reason I 6 stated. The subpoena directed to Ms. Wagner was not 7 directed to Ms. Wagner in a corporate capacity with 8 Harford County. It was directed to her individually and 9 she does not individually possess any such documents.</p> <p>10 Just because Counsel has asked our client, Harford 11 County, in the course of other cases that we are 12 defending to pull documents, that that may ultimately be 13 relevant to our defense of those claims, Ms. Mocht does 14 not make those documents responsive to a subpoena issued 15 to Ms. Wagner individually.</p> <p>16 MR. COREN: And you consider documents that 17 were gathered that were specific Box Hill, as the 18 witness described, part of the Harford defense?</p> <p>19 MR. KRAUSE: It may very well be.</p> <p>20 MR. COREN: Or you don't know?</p> <p>21 MR. KRAUSE: I think that's protected by 22 attorney work product. I don't think I owe you an 23 explanation as to how I view documents that we gathered.</p> <p>24 MR. COREN: No, but I do believe you now owe 25 Judge Boal an explanation, so I'm trying to get your</p>



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1 explanation there so that when we pursue a motion for 2 sanctions, that your side is there. So now's the 3 time.	1 Q How many times? 2 A Just once. 3 Q And when was that?
4 MR. KRAUSE: I believe my position's been 5 conveyed clearly.	4 A Last week. 5 Q And have you read anything to prepare for 6 your deposition today?
6 MR. COREN: There's nothing further you want 7 to add to Judge Boal at this time?	7 MR. KRAUSE: Ms. Wagner, I want you to make 8 sure you limit your response to anything you read 9 independently and not your meeting with counsel.
8 MR. KRAUSE: I'm speaking to you, not to 9 Judge Boal at this time, but I made my position clear.	10 A Correct. I just kind of reviewed what would 11 be expected of me at a deposition. Just basically what 12 you went over.
10 MR. COREN: Well, just so we're clear, I'm 11 offering an opportunity to address Judge Boal directly 12 because we intend to make a motion.	13 Q Where would you have read that material? 14 A It was like a "witness how to" kind of thing. 15 It was just instructions.
13 MR. KRAUSE: And I'll be happy to be heard 14 when Judge Boal asks me to speak.	16 Q Did you find that on the Internet? 17 A A little bit on the Internet and then just 18 how counsel talked to me.
15 MR. COREN: Perhaps, considering now is the 16 time we're asking because it seems a little bit of game 17 playing is being done here. I yield.	19 Q Okay.
18 MS. KASPUTYS: Thank you.	20 A But I can't --
19 BY MS. KASPUTYS:	21 Q So there may have been documents that were 22 given to you by counsel to help prepare you --
20 Q And I'm specifically, as we're looking at 21 Attachment A, number 5, any and all documents relating 22 to the exchange of medications purchased from NECC 23 between HCASC and Box Hill Surgery Center. Were there 24 documents that were responsive to this request that you 25 put together and gave to your general manager?	23 A Not really. 24 Q -- how to answer questions? 25 A Oh, yeah. But general stuff.
Page 15	Page 17
1 A What do you mean by exchange? 2 Q Well, actually -- well, we'll get to that a 3 little further in the deposition. 4 But what I am speaking of, I'll tell you now, 5 if there were medications, i.e., methylprednisolone 6 acetate preservative-free that was transferred from the 7 inventory at Harford County Ambulatory Surgery Center to 8 Box Hill, were there document related to such an 9 exchange of medication?	1 Q Have you read or been shown any depositions 2 -- 3 A No. 4 Q -- that were taken of other parties or 5 witnesses in this case? 6 A No. 7 Q Have you met with or consulted with Kenneth 8 Vickers prior to this deposition -- 9 A No. 10 Q -- regarding your being deposed? 11 MS. STEINER: Who is Kenneth Vickers? 12 A Yeah. 13 MR. COREN: Andrew. 14 Q I'm so sorry. I've done that before. I 15 don't know why, who I'm thinking of. Must be somebody 16 different. I'm sorry. 17 Do you know Andrew Vickers? 18 A I do. 19 Q And do work with Mr. Vickers? 20 A On occasion. 21 Q And have you met or consulted with him to 22 prepare for this deposition? 23 A No, I have not. 24 Q Have you met or consulted with Dr. Ritu 25 Bhamhani to prepare for this deposition?
10 A Yes. 11 Q And those documents are among those that you 12 turned over to the general manager -- 13 A Yes. 14 Q -- at Harford County Surgery Center? 15 A Nurse administrator. 16 Q The nurse administrator. Who is the nurse 17 administrator? 18 A Kim Merrill. 19 Q I'd like to ask you a few questions regarding 20 what you did to prepare for today's deposition. Did you 21 meet with anyone in advance of today's deposition? And 22 I'm not asking you to tell me of the content of 23 conversations that you had with counsel. But I'm asking 24 you whether you met with counsel. 25 A Yes, I have.	



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1	A	Yes.	1 out this form for, let's say, patient's name in the
2	Q	Were you using this in 2012?	2 first row is -- I'll make up a name, Mary Brown -- and
3	A	Yes.	3 you write in name of medication to be compounded, assume
4	Q	And what was your title in 2012 at Harford	4 it's methylprednisolone acetate. Then let's assume
5		County Ambulatory Surgical Center?	5 strength is 80 milligrams per mL and let's assume it's
6	A	CST.	6 written in preservative-free and the unit size is -- it
7	Q	Did you have any other title or -- let me ask	7 would write in 1 mL in that column, correct?
8		you that. Did you have any other title?	8 A New England -- New England had it where I
9	A	I'm like an inventory manager. At that time,	9 would attach the list and they would have you put a
10		it's still just CST. They still -- Certified Surgical	10 quantity and they would let you put in a big volume. So
11		Technologist.	11 it was never like a list where it was 1, 1, 1, 1, 1. It
12	Q	Do you ever recall having the title Materials	12 was the total quantity that you wanted and then you just
13		Manager?	13 attached your patients' names. Like they just asked you
14	A	Uh-huh.	14 to attach the patients' names, but it was always
15	Q	Okay. And when is --	15 patients that were having injections.
16	A	I mean, that kind of goes hand in hand.	16 Q If there were 10 patients on this list that
17	Q	Goes hand in hand with what?	17 you had filled out, what would be a typical number of
18	A	That on my signature on my, on my signature	18 units that you would order for 10 patients?
19		page, I do materials manager -- I sign it as materials	19 MR. KRAUSE: Objection to form and
20		manager on my signature page on my e-mail.	20 foundation.
21	Q	Okay. And as materials manager, was one your	21 Q Let me rephrase the question, please.
22		duties and responsibilities to order medications such as	22 When you completed this form to send an order
23		you ordered from NECC using this form?	23 for compounded methylprednisolone acetate
24	A	Yes, and I was not the prescribing physician.	24 preservative-free to NECC, if you had, let's say --
25	Q	Okay. So when you wrote in the names, as you	25 there are how many lines on here? You would attach a
		Page 47	Page 49
1		just described, of upcoming patients who were to undergo	1 list?
2		procedures, who gave you that list of patients?	2 A Uh-huh.
3	A	The schedules. It was on the schedule.	3 Q But let's say it was 10 patients. What would
4	Q	Okay. And the name of the medication -- this	4 be the typical number of units that you put on this
5		is for compounded medications, correct?	5 form?
6	A	Correct.	6 MR. KRAUSE: Objection to form and
7	Q	The name of the medication for each patient,	7 foundation.
8		was that written in by you?	8 A What they would -- New England would allow 5
9	A	Uh-huh.	9 units per patient name.
10	Q	And that was based on instructions by a	10 Q Okay. So if there were 10 patients on your
11		physician?	11 attached list --
12	A	No. It says name on medication to be	12 A It would be 50 vials.
13		compounded. The preference, the physician preference	13 Q You would get 50 vials?
14		was the methylprednisolone acetate.	14 A Uh-huh.
15	Q	And do you recall the strength for the --	15 Q And there were 50 sink single-dose vials?
16		third column?	16 A 50 1 mL single dose vials.
17	A	At times it was 40 milligrams or 80	17 Q But there were 5 mLs per patient?
18		milligrams. It depended on what their preference was.	18 A That's how their list went. That's how Dave
19	Q	Also, do you recall the unit size?	19 said to do the list.
20	A	It was always 1 mL.	20 Q When the order -- after the order was placed,
21	Q	Okay. And the number of units, do you recall	21 did you get a confirmation of the order?
22		for each patient how many units you would put in this	22 A They usually called.
23		column?	23 Q Did they call you or someone else at Harford
24		MR. KRAUSE: Objection. Foundation.	24 County?
25	Q	I'll rephrase the question. When you filled	25 A They called the facility and if they didn't



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1 speak to me, they would leave a message or talk, talk to 2 the receptionist at the front desk or to my nurse 3 manager.	1 manager would say we were helping each other out or 2 helping them out when they needed it. Dr. Bhamhani had 3 established relationship with us. She wasn't a 4 stranger. She was one our physicians for a long time. 5 She was an anesthesiologist. She did pain management. 6 She even had an office next door to us.
4 Q And, again, your nurse manager in 2012 was?	7 Q Do you recall in 2012 Dr. Bhamhani obtaining
5 A Kim Merrill.	8 for Box Hill methylprednisolone acetate
6 Q Did Kim Merrill also order compounded	9 preservative-free lot number 0521? And I have to get
7 medications from NECC?	10 the rest of the numbers. But do you recall? Let's back
8 A Probably occasionally, but I'm not sure if	11 that up a second.
9 she -- I don't remember.	12 Do you recall Dr. Bhamhani obtaining before
10 Q But was this --	13 the recall in September of 2012 methylprednisolone
11 A This would be the form. If it was NECC, this	14 acetate preservative-free for use at Box Hill patients
12 would be the form.	15 -- at Box Hill Surgery Center from Harford County
13 Q And when you ordered -- let me strike that.	16 Ambulatory Surgical Center?
14 When you used this form for a particular	17 MS. STEINER: Objection to form.
15 group of patients coming up on the schedule, was there	18 A Dr. Bhamhani did not obtain it.
16 anyone else who signed off on this?	19 Q Who did?
17 A The medical director had his signature and	20 A Mr. Vickers.
18 DEA number on here or -- I mean, it was always a	21 Q Now, you mentioned it was a courtesy. When
19 physician.	22 Mr. Vickers obtained the MPA PF for use at Box Hill
20 Q Okay. Who was the medical director at that	23 Surgery Center, can you narrow down the time?
21 time?	24 A I can. I actually remember that.
22 A In 2012?	25 Q When was that?
23 Q Correct.	
24 A Constantine Misoul.	
25 Q Okay. And if the list -- strike that	
Page 51	Page 53
1 question.	1 A It was towards the end of August. His order
2 Do you know whether Box Hill Surgery Center	2 from New England Compounding did not come in. He was
3 ever obtained any medications from Harford County	3 worried he was going to run out by probably
4 Ambulatory Surgical Center for use at Box Hill Surgery	4 mid-September and he just needed -- he just asked if we
5 Center?	5 could supply him, if they could purchase on behalf of
6 A Yes.	6 Box Hill, purchase the MPA to carry them through. I
7 Q Do you know what medications Box Hill Surgery	7 hadn't given them any orders of MPA that whole year.
8 Center obtained from Harford County Ambulatory Surgery	8 That was the first time that year that I recall that he
9 Center -- Surgical Center?	9 asked for help.
10 A Yes. It was a variety. Some of it was	10 Q And I believe you just said that the MPA was
11 lidocaine and Omnipaque and the MPA. It was when they	11 purchased by Mr. Vickers. Did they --
12 were short or needed medications that they didn't	12 A It was purchased by Box Hill. Mr. Vickers
13 have.	13 did their ordering.
14 Q You said that it included the MPA. That	14 Q Understood.
15 means the MPA --	15 A Okay.
16 A At times it did.	16 Q Now, when the Harford County Ambulatory
17 Q -- preservative-free. Was that MPA	17 Surgical Center, as courtesy, gave MPA PF to Mr.
18 preservative-free obtained from New England Compounding	18 Vickers, was it for -- was it a transaction --
19 Pharmacy?	19 A Yes.
20 A Yes.	20 Q -- that involved cash?
21 Q Do you know who made the arrangements to give	21 A No.
22 the medication to Box Hill Surgery Center when they had	22 Q Or a check or some kind of payment?
23 a shortage?	23 A It was invoiced.
24 A The surgery centers -- it was more like a	24 Q It was invoiced?
25 business courtesy, that it wasn't something that like my	25 A Dr. Bhamhani wrote a check. Yes.



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<p>1 Q Did Mr. Vickers -- as you said, you recall 2 him being the representative from Box Hill Surgery 3 Center who asked for the MPA at the end of August of 4 2012. Was that a phone call to you?</p> <p>5 A I don't remember the exact -- I don't 6 remember if it was a phone call or if he was working at 7 our facility and mentioned it. I don't remember. But I 8 know in person we had -- you know, when he picked it up, 9 he had mentioned that they were having ordering, the 10 order was delayed from New England Compounding.</p> <p>11 Q Do you know how many vials Mr. Vickers, how 12 many vials of MPA PF from New England Compounding 13 Pharmacy Mr. Vickers picked up from Harford County 14 Ambulatory Surgical Center at the end of August of 2012?</p> <p>15 A Yes. It was 35.</p> <p>16 Q Now, I believe you said earlier that you 17 became of aware of NECC recall of the MPA PF in 18 September, at the end of September; is that correct 19 this?</p> <p>20 A Correct.</p> <p>21 Q Or early October?</p> <p>22 MR. KRAUSE: Objection. Asked and 23 answered.</p> <p>24 Q 2012?</p> <p>25 MR. KRAUSE: Objection. Asked and answered.</p>	<p>1 received this at Harford County Ambulatory Surgical 2 Center?</p> <p>3 MR. KRAUSE: Objection. Foundation. You may 4 answer.</p> <p>5 A Well, I'm not sure which fax it came to. I 6 don't -- I wouldn't know which fax. I don't have a fax 7 personally, that we have open fax machines.</p> <p>8 Q Okay. When did you first see this document?</p> <p>9 A Probably the 27th.</p> <p>10 Q And did you do anything in response to this 11 document?</p> <p>12 A Yes. So my nurse administrator was aware. I 13 think I was in the OR. But what our team did was we 14 immediately isolated the medication and followed the 15 directions as typical recalls happen quite frequently. 16 This was just another recall where you isolate the 17 product. You notify -- you notify -- you let the 18 company know that if you have any product and isolate it 19 and basically just follow the directions.</p> <p>20 Q Okay. And with respect to the lot number 21 listed on this document describing "Product description 22 states Methylprednisolone Acetate (PF), 80 milligrams 23 per mL injection, lot number 05212012 @ 68, quantity 24 150," do you recall whether or not this lot number was 25 the same lot number of the 35 vials that were purchased</p>
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<p>1 A Yes. It was the end of September and I 2 believe it was between the 25th and 27th, or 25th and 3 29th.</p> <p>4 MS. KASPUTYS: I'm going to mark as the next 5 exhibit -- I believe it's 1604, a document I'll hand to 6 the witness and counsel.</p> <p>7 (Exhibit No. 1604 was marked for 8 identification.)</p> <p>9 MS. KASPUTYS: Sorry. My reach is terrible.</p> <p>10 MR. KRAUSE: That's okay.</p> <p>11 BY MS. KASPUTYS:</p> <p>12 Q You know, I gave you the wrong -- I put the 13 sticker on the top that's highlighted. I want to change 14 that because that's my copy.</p> <p>15 A All right.</p> <p>16 Q Thank you.</p> <p>17 A Thank you.</p> <p>18 Q And I can take this away from you.</p> <p>19 Now, I'd ask you to take a look at the 20 document that's been marked as Exhibit 1604. Tell me, 21 have you seen this document before?</p> <p>22 A Yes.</p> <p>23 Q Do you recall when you received this 24 document? Let me ask you, rephrase the question. 25 Who would have been the person who first</p>	<p>1 by Box Hill Surgery Center from Harford County 2 Ambulatory Surgical Center?</p> <p>3 MR. KRAUSE: Objection. Foundation.</p> <p>4 A Upon receiving when you saw this urgent 5 voluntary product recall, did you take any steps to 6 contact Mr. Vickers or anyone else at Box Hill Surgery 7 Center to notify them that you had received, that 8 Harford County Ambulatory Surgical Center had received 9 this urgent voluntary recall?</p> <p>10 MR. KRAUSE: Referring to her individually, 11 Patty?</p> <p>12 MS. KASPUTYS: I am. Yes.</p> <p>13 MR. KRAUSE: Thank you.</p> <p>14 A I had spoken with my nurse administrator and 15 I did -- I can't remember if Dr. Bhamhani or Mr. 16 Vickers were present at the facility or if I talked to 17 them on the phone, but they were notified immediately. 18 I just can't remember if it was in person or on phone.</p> <p>19 Q Do you recall whether you asked them to 20 return to Harford County Ambulatory Surgical Center any 21 remaining vials that they may have from the 35 vials 22 they had purchased earlier or late August?</p> <p>23 A I did not ask them to return anything. I 24 left that up to them because they had received the same 25 recall and I let them follow through with whether they</p>

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1 NECC?	1 MR. COREN: Okay. Then it's at your client's
2 A Yes, but we had to supply patient names.	2 risk that we're going to be bringing her back and asking
3 This would eliminate.	3 for sanctions.
4 Q Well, as I understood it, you were taking a	4 BY MR. COREN:
5 patient list, filling out the form and stapling or	5 Q Now, let's talk now about this event where
6 attaching, however, --	6 inventory of MPA on hand was transferred or sold to Box
7 A Yes.	7 Hill. Okay. Do you recall your testimony on that?
8 Q -- a patient name. Obviously, not stapling	8 A Yes.
9 because you were faxing these to NECC, correct?	9 Q Okay. Now, you indicated that it was a sale
10 A Yes.	10 of the MPA that you on hand to Box Hill, correct?
11 Q So how much more effort was it to do the	11 A Yes.
12 patient list the way you were describing versus ordered	12 Q And this -- at the time that this sale was
13 from NECC?	13 made, as I understand your testimony, the decision to
14 MR. KRAUSE: Objection to form of the	14 change from JCB to NECC had already been made, correct?
15 question.	15 A Yes.
16 A JCB only requires a phone call to order the	16 Q At the time that you spoke with -- who is it
17 meds now. I can just give them a PO and be invoiced and	17 that you spoke with about transferring the materials?
18 have the packing slip the same way that NECC sent it. I	18 Dr. Bhamhani or Miss --
19 have the same thing with JCB except I don't have to turn	19 MR. KRAUSE: Objection. Asked and answered.
20 in any patient names. I'm not a pharmacist. I don't	20 A Mr. Vickers had requested help.
21 need -- I don't save patient information.	21 Q Okay. And at the time that Mr. Vickers
22 Q Now, other than the administrative ease of	22 called upon you for assistance in providing them with
23 ordering that you just described, were there any other	23 the NECC MPA, did you tell Mr. Vickers that, you know,
24 pros and cons as best that you can recollect of changing	24 we are not using this -- we're not buying this anymore
25 from JCB to NECC?	25 from NECC?
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1 MR. KRAUSE: Objection. Asked and answered	1 A I don't remember.
2 at least three, if not more, times. Don't answer that	2 Q You say an invoice was given. Did you
3 question again. Move on.	3 prepare the invoice?
4 MR. COREN: Excuse me, but I have a right to	4 A Yes.
5 see if the recollection of a witness is exhausted, and	5 Q Is the invoice one of the documents that you
6 we will bring this witness back if we do not get the	6 gathered up on Box Hill that you gave to counsel?
7 answer, so it's your choice, Counselor.	7 A I don't know if you guys received it. I know
8 MR. KRAUSE: Counsel, you didn't get to ask	8 that it was prepared.
9 the witness the same question multiple times. You've	9 Q Was it you amongst the materials that you
10 asked the same question at least three, if not, four	10 gathered up?
11 times. You don't get to keep asking until you get an	11 A Yes.
12 answer that you want.	12 Q And you had indicated that the doctors have a
13 She's already told you from her perspective	13 preferred list of medications?
14 of what she recalls from the conversation and told you	14 A Yes.
15 repeatedly that she does not recall the substance of	15 Q The doctors at Harford County Community --
16 other discussions.	16 Harford County Ambulatory Center.
17 MR. COREN: No, that's not what she said,	17 A Any surgeon I work with has a preference.
18 Counselor. She said she doesn't have a verbatim	18 Q Did Dr. Bhamhani have a preference list for
19 recollection; okay? That's what she said. Now we can	19 the drug sheet used at Harford County?
20 go on to find out as best she can recollect what the	20 A Yes.
21 tenor is. That's all we're asking. And once that's	21 MS. STEINER: Can I get you to clarify? What
22 exhausted, then we'll move onto the next.	22 do you mean? As a surgeon or as an anesthesiologist?
23 But are you instructing her to clouture this	23 Q Are the lists different between -- I like
24 portion of our examination?	24 Counsel's question. I'll adopt it. Thank you.
25 MR. KRAUSE: I am.	25 Are the -- is there two lists for Dr.



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1 Bhamhani or one list?	1 MR. KRAUSE: Objection to foundation.
2 A I don't understand your question now.	2 A Not that I know of. Anything that was
3 Q Sure. Okay. Counsel for Dr. Bhamhani	3 related to Box Hill, I know she's been gone for a long
4 wanted a clarification, which I have agreed to adopt,	4 time, so I only did the stuff that I knew was related to
5 and that is that is there a difference between the lists	5 Box Hill which was the items that were sold to Box Hill.
6 of medication for Dr. Bhamhani when she's serving in	6 Q Does the Box Hill materials contain anything
7 her capacity as an anesthesiologist at Harford County	7 other than materials that were sold or transferred to
8 and when she was, is or was acting as a pain doctor at	8 Box Hill?
9 Harford County?	9 MR. KRAUSE: Objection to form.
10 A Yes. There's a difference.	10 A I don't know what you mean. What else --
11 Q Is there two lists?	11 Q What don't you just tell us. What are the
12 A No.	12 Box Hill materials? Can you describe them for us?
13 Q So there's only one list?	13 MR. KRAUSE: Objection to form of the
14 A Anesthesia is different. Anesthesia -- I'm	14 question.
15 not the anesthesiologist. I know they have a par level	15 A If they needed -- if Mr. Vickers was short on
16 in their cart. I order medications for the whole	16 ordering something or it was infrequent and it would be
17 facility. It's in bulk. It's always in bulk.	17 small individual supplies. It might be a Tegaderm. It
18 Q Understood. Now, with reference to Dr.	18 might be two half sheets. It might be a couple surgical
19 Bhamhani, I'm just trying to have an understanding --	19 gowns. They didn't have to order the whole case that
20 A Okay.	20 you normally have to order. They would do certain
21 Q -- of her patient list. Excuse me, her	21 procedures and it would just be a few items here and
22 preference list.	22 there. It wasn't often. It wasn't -- it wasn't
23 A Okay.	23 monthly. It wasn't -- it was just occasionally. And it
24 Q This list, is it writing of some sort or a	24 was more occasional in the beginning when she first
25 computer list? What is it?	25 started her business than it was as she got established.
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1 A For surgery -- if she's doing -- if she's	1 Q When the -- you had indicated the 35 vials in
2 performing a procedure.	2 some time prior to the recall --
3 Q Okay.	3 A Yes.
4 A Okay. Anesthesia is its own. Anesthesia is	4 Q -- were obtained by Box Hill from Harford
5 divided by the type of anesthesia, not by the -- it's	5 County. At the time that -- how was -- what was
6 the type of anesthesia. As a surgeon, if she's	6 actually transferred? Were they the foil pouches
7 performing a procedure on a patient, not anesthesia,	7 transferred? Were the labels transferred? What was
8 then she has preference cards.	8 transferred in addition to the vials?
9 Q Okay. And the card, C-A-R-D-S you're saying?	9 A I don't recall the exact transfer, how they
10 A Yes.	10 were sent. It was -- I don't recall. Like I know that
11 Q Okay. Thank you. Is there in existence a	11 he took the vials but I don't know if they were in a
12 preference list, a preference card, rather, for Dr.	12 foil pack or not.
13 Bhamhani as a surgeon or as a pain specialist at	13 Q Did Mr. Vickers or Dr. Bhamhani or somebody
14 Harford County Ambulatory Center?	14 from Box Hill provide patient names of their procedures
15 MS. STEINER: At what point?	15 to you for those medications?
16 Q At any point in time.	16 A No.
17 A I don't know how our programs work in leaving	17 Q About how many -- about on the average, about
18 stuff that's old in there. But at the time that she was	18 how many vials would you order at one time from NECC?
19 doing pain management, our facility, she had a	19 And I'm referring to the MPA.
20 preference card that would give you the patient	20 A Usually it was between a hundred to 250
21 position, the patient prep. It would list all her	21 vials.
22 med-surg supplies, which included medications.	22 Q Did you recall having any discussion with Dr.
23 Q Amongst the documents that you gathered up	23 Bhamhani about the recall?
24 and provided to counsel, was Dr. Bhamhani's preference	24 A I think I gave her our copy of the recall
25 card a document that was among those materials?	25 just because I didn't know if she had it or not, but I



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1 can't remember if I spoke with her or if Kim Merrill 2 spoke with her. My nurse administrator. 3 Q Were you involved in notifying the patients 4 of Harford County? 5 A No. I was only involved by helping compile 6 the list of names that, of people that had the 7 injections. 8 Q But you didn't make any of the calls? 9 A No. 10 Q Did you at that time ask Dr. Bhamhani who 11 was administered the 25 vials that were not returned to 12 you? 13 A No. They were taking care of their own 14 recall. 15 Q Was anything done to assure Harford County 16 that the people who had the medication that they 17 provided to Box Hill were notified? 18 MR. KRAUSE: Objection. Foundation. 19 A I won't know that answer. 20 Q Was anything ever done to learn the fate of 21 the 25 people who were administered the medication that 22 was transferred from Harford County to Box Hill in or 23 around September -- 24 A No. 25 Q -- 2012?	1 medication you were ordering? 2 MR. KRAUSE: Object to form. 3 A I was not involved in any of that. NECC, I 4 believe, was established before I started. That wasn't 5 established by me. 6 Q You indicated microbiology reports. 7 A Uh-huh. 8 Q Do you recall referring them, making 9 reference to that? 10 A Yes. Yes, I do. 11 Q What were you referring to, ma'am? 12 A Every order came with a packing slip and 13 invoice and microbiology report from the Analytical 14 Research Company or some research company. In the past, 15 I remember, like, prior to New England, there was a 16 company that was using a Dynalabs. I think JCB used the 17 same research company in the beginning, the Analytical 18 Research Company, and I don't know who they use now. 19 Q In your discussions with JCB when they were 20 soliciting your business regarding certain drugs, did 21 they ever discuss NECC's qualities or abilities or 22 issues with them? 23 A No. 24 Q In connection with NECC, was any effort made 25 to check with any board of pharmacy, be it Maryland's or
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1 MR. KRAUSE: Objection. Foundation. 2 MS. STEINER: Objection. Foundation. 3 Q Do you know whether the -- do you know what 4 happened to the 25 vials that were not returned? 5 A No. 6 Q Did you ever ask? 7 A I don't recall asking. 8 Q Was it your assumption that they were 9 administered? 10 MR. KRAUSE: Objection to foundation. 11 MS. STEINER: Objection. Foundation. 12 A I don't know. 13 Q Never wondered what happened to them? 14 MR. KRAUSE: Objection. 15 MS. STEINER: Objection as to form. 16 A When I -- when we talked about the recall, in 17 the beginning of the recall and we had -- like I said, I 18 can't remember if it was a phone call or if it was in 19 person, Box Hill addressed that they would take care of 20 their own patients and report to the CDC. Like do 21 everything that the CDC and the New England required. 22 Everything that was required, so. 23 Q Do you know if there was anything done to, by 24 Harford County Ambulatory Center to determine the 25 abilities and credentials of NECC to provide the	1 Massachusetts or wherever? 2 MR. KRAUSE: Objection. Foundation. 3 A I wasn't involved in setting up the account 4 and I'm not a pharmacist or a doctor to know what the 5 processes are. 6 Q Were you on -- you indicated it was a 7 committee decision to switch from NECC to JCB, 8 correct? 9 A Yes. 10 Q Was as part of that discussion, committee 11 discussion, did the committee discuss anything about 12 vetting JCB as a supplier of these drugs to you? 13 MR. KRAUSE: Objection. Foundation. 14 A I don't remember the exact conversation. 15 Q And you had indicated this went from your 16 group to some management committee at the center? 17 A We have a governing board that usually I'm 18 involved in as well. It's our medical director and our 19 owner and our nurse administrator and usually infection 20 control nurse and whoever else. I don't know all the 21 titles that everybody that gets involved. 22 Q And what was the reasons given to that 23 committee for the change from NECC to JCB as the 24 supplier of MPA? 25 MR. KRAUSE: Objection. Asked and answered



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